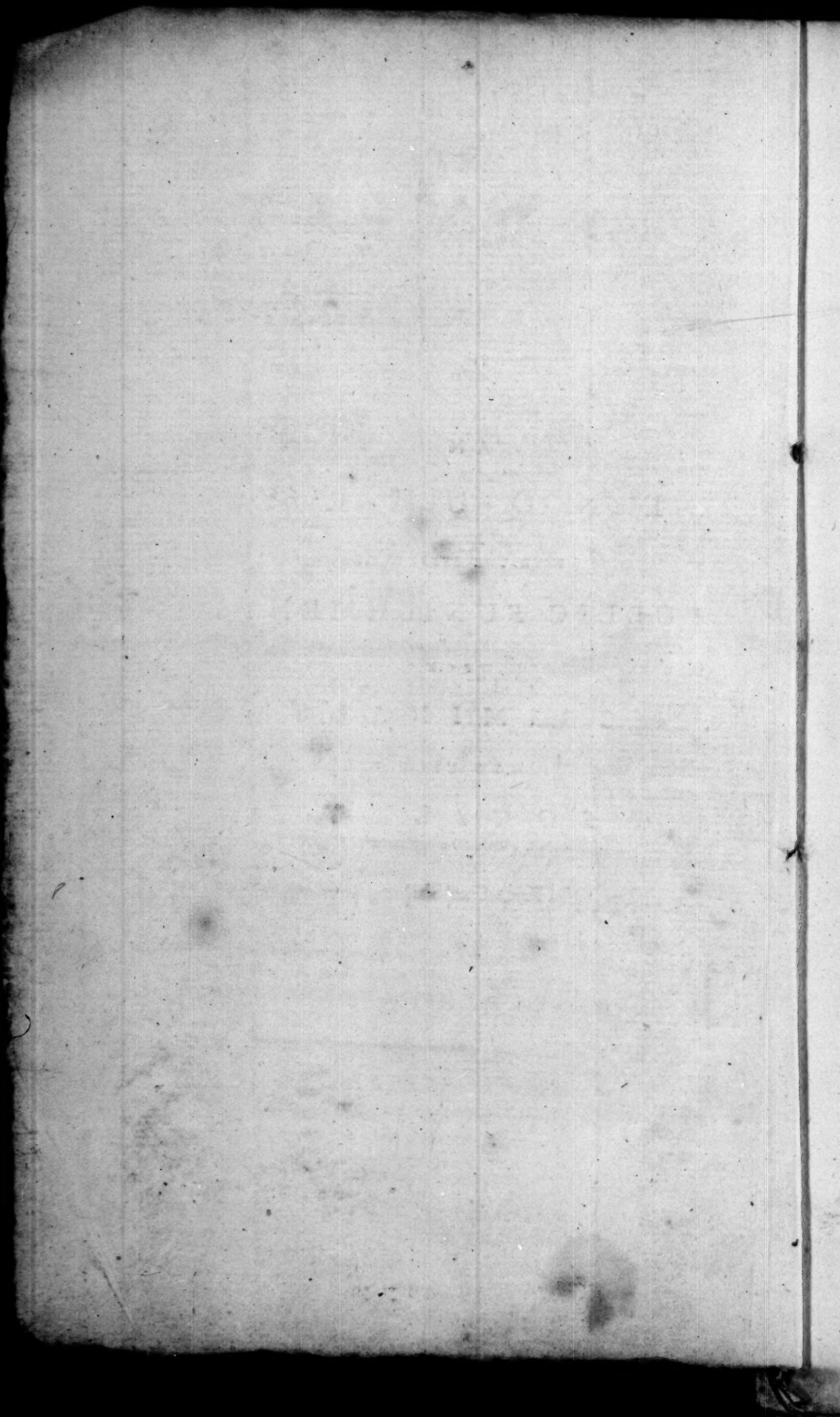


AN
ENQUIRY
INTO THE EFFECTS OF
PUBLIC PUNISHMENTS
UPON
CRIMINALS
AND UPON
SOCIETY.

[Price One Shilling.]



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READ IN THE SOCIETY FOR PROMOTING POLITICAL
ENQUIRIES, CONVENED AT THE HOUSE OF
HIS EXCELLENCY

BENJAMIN FRANKLIN, Esq.
IN PHILADELPHIA, MARCH 9th, 1787.

By BENJAMIN RUSH, M.D.
PROFESSOR OF CHEMISTRY IN THE UNIVERSITY OF
PENNSYLVANIA.

"Accustomed to look up to those Nations from whom we have
"derived our Origin, for our Laws, our Opinions, and our Man-
"ners; we have retained, with undistinguishing Reverence, their
"Errors, with their Improvements; have blended, with our Public
"Institutions, the Policy of dissimilar Countries; and have grafted,
"on an Infant Commonwealth, the Manners of ancient and cor-
"rupted Monarchies." *Preface to the Laws of the Society for Poli-
tical Enquiries.*

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CHITTY

P R E F A C E.

BY a late alteration in the penal laws of Pennsylvania, crimes of all kinds are now punished with **HARD LABOUR**:—But by an unfortunate mistake in the new law, criminals are exposed to the *public eye* under circumstances, which, in the opinion of the author of this Enquiry, are calculated to defeat its benevolent intention, and even to render the change more injurious to society than the less common, and more serious punish-

punishment of death. To point out this mistake in the law, as well as to shew the pernicious effects of public punishments of all kinds, the following Enquiry was composed, and read in the Society for promoting Political Enquiries, lately instituted in Philadelphia, under the patronage of the venerable Dr. Franklin. The candor with which the opinions were received by the Members of the Society, and the requests of some particular friends, have induced the author to consent to their being published sooner than was intended. If his opinions are just, it will give him no less pleasure to hear of their influence in Great Britain, than in America; for, in the pursuits of humanity, men of every country are citizens of the same republic. The author hopes that the hints he has suggested will be pursued by persons

P R E F A C E.

vi

sons whose studies and opportunities of observation, are more favourable than his own, to the encrease of knowledge upon this subject.

PHILADELPHIA,
APRIL 5, 1787.

ENQUIRY

W. H. A. C. H.

that which studies and opportunities of ob-
servation are more favorable than in our
to the extent of knowledge upon this
subject.

For the purpose of the present work
the following facts are given:

1. The first fact is that the

second fact is that the

third fact is that the

fourth fact is that the

fifth fact is that the

sixth fact is that the

seventh fact is that the

eighth fact is that the

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ENQUIRY

AN
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EFFECTS OF PUBLIC PUNISHMENTS
UPON
CRIMINALS,
AND UPON
SOCIETY.

THE design of punishment is said to be,
—1st, to reform the person who suffers
it,—2dly, to prevent the perpetration of
crimes, by exciting terror in the minds of
spectators; and,—3dly, to remove those per-
sons from society, who have manifested, by
their tempers and crimes, that they are unfit
to live in it.

From the first institution of governments,
in every age and country (with only a few
exceptions) legislators have thought that pu-
nishments should be *public*, in order to pro-
duce

duce the two first of these intentions. It will require some fortitude to combat an opinion that has been sanctified by such long and general prejudice, and supported by universal practice. But truth in government, as well as in philosophy, is of progressive growth. As in philosophy, we often arrive at truth by rejecting the evidence of our senses; so in government, we often arrive at it after divorcing our first thoughts. Reason, though deposed and oppressed, is the only just sovereign of the human mind. Discoveries, it is true, have been made by accident; but they have derived their credit and usefulness only from their according with the decisions of reason.

In medicine, above every other branch of philosophy, we perceive many instances of the want of relation between the apparent cause and effect. Who, by reasoning *à priori*, would suppose, that the hot regimen was not preferable to the cold, in the treatment of the small-pox? But experience teaches us, that this is not the case. Cause and effect appear to be related in philosophy, like the objects of chemistry. Similar bodies often repel each other, while bodies that are dissimilar in figure, weight,

weight, and quality, often unite together with impetuosity. With our present imperfect degrees of knowledge of the properties of bodies, we can discover these chemical relations only by experiment. The same may be said of the connection between *cause* and *effect*, in many parts of government. This connection often accords with reason, while it is repugnant to our senses—and when this is not the case, from our inability to perceive it, it forces our consent from the testimony of experience and observation.

It has been remarked, that the profession of arms owes its present rank, as a science, to its having been rescued, since the revival of letters, from the hands of mere soldiers, and cultivated by men acquainted with other branches of literature. The reason of this is plain. Truth is an unit. It is the same thing in war—philosophy—medicine—morals—religion and government; and in proportion as we arrive at it in one science, we shall discover it in others.

After this apology, for dissenting from the established opinion and practice, upon the

subject of public punishments, I shall take the liberty of declaring, that the great ends proposed, are not to be obtained by them; and that, on the contrary, all *public* punishments tend to make bad men worse, and to encrease crimes, by their influence upon society.

I. The reformation of a criminal can never be effected by a public punishment, for the following reasons :

1st, As it is always connected with infamy, it destroys in him the sense of shame, which is one of the strongest out-posts of virtue.

2dly, It is generally of such short duration, as to produce none of those changes in body or mind, which are absolutely necessary to reform obstinate habits of vice.

3dly, Experience proves, that public punishments have encreased propensities to crimes. A man who has lost his character at a whipping-post, has nothing valuable left to lose in society. Pain has begotten insensibility to the whip; and shame to infamy. Added
to

to his old habits of vice, he probably feels a spirit of revenge against the whole community, whose laws have inflicted his punishment upon him ; and hence he is stimulated, to add to the number and enormity of his outrages upon society. The long duration of the punishment, when public, by encreasing its infamy, serves only to encrease the evils that have been mentioned. The criminals, who were sentenced to work in the presence of the city of London, upon the Thames, during the late war, were prepared, by it, for the perpetration of every crime, as soon as they were set at liberty from their confinement. I proceed,

II. To shew, that public punishments, so far from preventing crimes by the terror they excite in the minds of spectators, are directly calculated to produce them.

All men, when they suffer, discover either fortitude, insensibility, or distress. Let us enquire into the effects of each of these upon the minds of spectators.

1st, Fortitude is a virtue, that seizes so forcibly upon our esteem, that wherever we see it, it never fails to weaken, or to obliterate, our detestation of the crimes with which it is connected in criminals. "I call upon you (said major André, at the place of his execution, to his attendants) to bear witness, gentlemen, that I die like a brave man." The effect of this speech upon the American army is well known. The spy was lost in the hero; and indignation, every where, gave way to admiration and praise. But this is not all—the admiration which fortitude, under suffering, excites, has in some instances excited envy. In Denmark, uncommon pains are taken to prepare criminals for death, by the conversation and instructions of the clergy. After this they are conducted to the place of execution, with uncommon pomp and solemnity. The criminals, under these circumstances, suffer death with meekness—piety—and sometimes with dignity. The effects of this, I have been well informed, have been, in several instances, to induce deluded people to feign or confess crimes, which they had never committed, on purpose to secure

secure to themselves a conspicuous death and a certain entrance into future happiness. There is something, in the presence of a number of spectators, which is calculated to excite and strengthen fortitude in a sufferer. "It is not so difficult a thing (said Lewis the XIV. to his courtiers, who stood around his death-bed) to die, as I expected." "No wonder," says Voltaire, who relates this anecdote, "for all men die with fortitude, who die in company." The bravery of soldiers is derived, in a great degree, from the operation of this principle in the human mind.

2dly, If criminals discover *insensibility* under their punishments, the effect of it must be still more fatal upon society. It removes, instead of exciting terror. In some instances, I conceive it may excite a desire in the minds of persons whom debt or secret guilt have made miserable, to seek an end of their distresses in the same enviable apathy to evil.—Should this insensibility be connected with cheerfulness, (which is sometimes the case) it must produce still more unfriendly effects upon society. But terrible must be the consequences of this insensibility and cheerfulness,

ness, if they should lead criminals to retaliate upon the inhuman curiosity of spectators, by profane or indecent insults or conversation.

3dly, The effects of *distress* in criminals, though less obvious, are not less injurious to society, than fortitude or insensibility. By an immutable law of our nature, distress of all kinds, when *seen*, produces sympathy, and a disposition to relieve it. This sympathy in generous minds, is not lessened by the distress being the offspring of crimes; on the contrary, even the crimes themselves are often palliated by the reflection, that they were the unfortunate consequences of extreme poverty—of seducing company—or of the want of a virtuous education, from the loss or negligence of parents in early life. Now, as the distress which the criminals suffer, is the effect of a law of the state, which cannot be resisted, the sympathy of the spectator is rendered abortive, and returns empty to the bosom in which it was awakened. Let us briefly examine the consequences of this abortive sympathy in society. It will not be necessary here to dwell upon all the advantages of this principle in human nature. It will be sufficient

ficient to observe, that it is the vicegerent of the divine benevolence in our world. It is intended to bind up all the wounds which sin and death have made among mankind. It has founded hospitals—erected charity-schools, and connected the extremes of happiness and misery together, in every part of the globe.—Above all, sensibility is the sentinel of the moral faculty. It decides upon the quality of actions before they reach that divine principle of the soul. It is of itself, to use the words of an elegant female poet *,

“ A hasty moral—a sudden sense of right.”

If such are the advantages of sensibility, now what must be the consequences to society of extirpating or weakening it in the human breast? But public punishments are calculated to produce this effect. To prove this, I must borrow an analogy from the animal œconomy.—The sensibility of the human body is said to be *active* and *passive*. The first is connected with motion and sensation; the second only with sensation. The first is encreased, the second is diminished, by

* *Miss* MORE.

the

the repetition of impressions. The same phenomena take place in the human mind. Sensibility here is both *active* and *passive*. Passive sensibility is lessened, while that which is active is increased by habit. The passive sensibility of a physician, to the distress of his patients, is always diminished, but his active sensibility is always encreased by time; hence we find young physicians *feel* most—but old physicians, with less feeling, *discover* most sympathy with their patients.

If such be the constitution of our minds, then the effects of distress upon them will be, not only to destroy passive, but, to eradicate active sensibility from them. The principle of sympathy, after being often opposed by the law of the state, which forbids it to relieve the distress it commiserates, will cease to act altogether; and, from this defect of action, and the habit arising from it, will soon lose its place in the human breast. Misery of every kind will then be contemplated without emotion or sympathy.—The widow and the orphan—the naked—the sick, and the prisoner, will have no avenue, to our services or our charity—and
what

what is worse than all, when the centinel of our moral faculty is removed, there will be nothing to guard the mind from the inroads of every positive vice.

I pass over the influence of this sympathy in its first operation upon the government of the state. While we pity, we secretly condemn the law which inflicts the punishment—hence arises a want of respect for laws in general, and a more feeble union of the great ties of government.

I have only to add, upon this part of my subject, that the pernicious effects of sympathy, where it does not terminate in action, are happily provided against by the Jewish law. Hence we read of a prohibition against it, where persons suffer for certain crimes. To spectators, the voice of Heaven, under such circumstances, is, "thine eye shall not pity him."

4thly, But it is possible the characters or conduct of criminals may be such, as to excite indignation or contempt, instead of pity, in the minds of spectators. Let us therefore

therefore enquire, briefly, into the effects of these passions upon the human mind. Every body acknowledges our obligations to *universal* benevolence. But these cannot be fulfilled, unless we love the whole human race, however diversified they may be by weakness or crimes. The indignation or contempt which is felt for this unhappy part of the great family of mankind, must necessarily extinguish a large portion of this universal love. Nor is this all—the men, or perhaps the women, whose persons we detest, possess souls and bodies composed of the same materials as those of our friends and relations. They are bone of their bone, and were originally fashioned with the same spirits. What then must be the consequence of a familiarity with such objects of horror, upon our attachments and duties to our friends and connections, or to the rest of mankind? If a spectator should give himself time to reflect upon such a sight of human depravity, he would naturally recoil from the embraces of friendship, and the endearments of domestic life, and perhaps say, with an unfortunate great man, after having experienced an instance of treachery in a friend, “ Oh !
that

that I were a dog, that I might not call man my brother."—The Jewish law forbade more than nine-and-thirty lashes, lest the sufferer should afterwards become "vile" in the sight of spectators. It is the prerogative of God alone, to contemplate the vices of bad men, without withdrawing from them the support of his benevolence. Hence we find, when he appeared in the world in the person of his son, he did not exclude criminals from the benefits of his goodness. He dismissed a woman caught in the perpetration of a crime, which was capital by the Jewish law, with a friendly admonition; and he opened the gates of paradise to a dying thief.

5thly, But let us suppose, that criminals are viewed without sympathy—indignation—or contempt. This will be the case either when spectators are themselves hardened with vice, or when they are too young, or too ignorant, to connect the ideas of crimes and punishments together. Here then a new source of injury to society arises from the public nature of punishments. Every portion
of

of them will appear, to spectators of this description, to be mere arbitrary acts of cruelty. Hence will arise a disposition to exercise the same arbitrary cruelty over the feelings and lives of their fellow-creatures. To see blows, or a halter, imposed in cold blood, upon a criminal, whose passive behaviour, operating with the ignorance of the spectators, indicates innocence more than vice, cannot fail of removing the natural obstacles to violence and murder in the human mind.

6thly, Public punishments make many crimes known to persons, who would otherwise have passed through life in a total ignorance of them. They moreover produce such a familiarity in the minds of spectators, with the crimes for which they are inflicted, that, in some instances, they have been known to excite a propensity to them. It has been remarked, that a certain immorality has always kept pace with public admonitions in the churches in the Eastern States. In proportion as this branch of ecclesiastical discipline has declined, fewer children have been born out of wedlock.

7thly,

7thly, Ignominy is universally acknowledged to be a worse punishment than death. Let it not be supposed, from this circumstance, that it operates more than the fear of death in preventing crimes. On the contrary, like the indiscriminate punishment of death, it not only confounds and levels all crimes, but by *encreasing* the disproportion between crimes and punishments, it creates a hatred of all law and government, and thus disposes to the perpetration of every crime. Laws can only be respected, and obeyed, while they bear an exact proportion to crimes. The law which punishes the shooting of a swan with death in England, has produced a thousand murders. Nor is this all the mischievous influence which the punishment of ignominy has upon society. While murder is punished with death, the man who robs on the highway, or breaks open a house, must want the common feelings and principles which belong to human nature, if he does not add murder to theft, in order to screen himself, if he should be detected, from that punishment which is acknowledged to be more terrible than death.

It

It would seem strange, that ignominy should ever have been adopted, as a milder punishment than death, did we not know, that the human mind seldom arrives at truth upon any subject, till it has first reached the extremity of error.

8thly, But may not the benefit derived to society by employing criminals to repair public roads, or to clean streets, overbalance the evils that have been mentioned? I answer, by no means. On the contrary, besides operating in *one*, or in *all* the ways that have been described, the practice of employing criminals in public labour, will render labour of every kind disreputable, more especially that species of it which has for its objects the convenience or improvement of the state. It is a well known fact, that white men soon decline labour in the West-Indies, and in the southern states, only because the agriculture and mechanical employments of those countries, are carried on chiefly by Negro slaves. But I object further to the employment of criminals on the high-ways and streets, from the idleness they will create, by alluring spectators
from

from their business; and thereby depriving the state of greater benefits from the industry of its citizens, than it can ever derive from the public labour of criminals.

The history of public punishments, in every age and country, is full of facts, which support every principle that has been advanced. —What has been the operation of the seventy thousand executions, that have taken place in Great-Britain from the year 1688, to the present day, upon the morals and manners of the inhabitants of that island? Has not every prison door that has been opened, to conduct criminals to public shame and punishment, unlocked, at the same time, the bars of moral obligation upon the minds of ten times the number of people? How often do we find pockets picked under a gallows, and highway-robberies committed within sight of a gibbet? From whence arose the conspiracies, assassinations and poisonings, which prevailed in the decline of the Roman empire? Were they not favoured by the public executions of the amphitheatre? It is therefore to the combined operation of indolence, prejudice, ig-
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norance—and the defect of culture of the human heart, alone, that we are to ascribe the continuance of public punishments, after such long and multiplied experience of their inefficacy to reform bad men, or to prevent the commission of crimes.

III. Let it not be supposed, from any thing that has been said, that I wish to abolish punishments. Far from it—I wish only to change the *place* and *manner* of inflicting them, so as to render them effectual for the reformation of criminals, and beneficial to society. Before I propose a plan for this purpose, I beg leave to deliver the following general axioms.

1st, The human mind is disposed to exaggerate every thing that is removed at a distance from it, by *time* or *place*.

2dly, It is equally disposed to enquire after, and to magnify such things as are *secret*.

3dly, It always ascribes the extremes in qualities, to things that are *unknown*, and an excess in duration, to *indefinite* time.

4thly, Cer-

4thly, Certain, and *definite evil*, by being long contemplated, ceases to be dreaded or avoided. A foldier soon loses, from habit, the fear of death from a bullet, but retains, in common, with other people, the terror of death from sickness or drowning.

5thly, An attachment to kindred and society is one of the strongest feelings in the human heart. A separation from them, therefore, has ever been considered as one of the severest punishments that can be inflicted upon man.

6thly, Personal liberty is so dear to all men, that the loss of it, for an indefinite time, is a punishment so severe, that death has often been preferred to it.

These axioms being admitted, (for they cannot be controverted) I shall proceed next to apply them, by suggesting a plan, for the punishment of crimes, which I flatter myself will answer all the ends that have been proposed by them.

1st, Let a large house, of a construction

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1st, Let a large house, of a construction
C 2 agreeable

agrecable to its design, be erected in a remote part of the state. Let the avenue to this house be rendered difficult and gloomy by mountains or morasses. Let its doors be of iron ; and let the grating occasioned by opening and shutting them, be encreased by an echo from a neighbouring mountain, that shall extend and continue a sound that shall deeply pierce the soul. Let a guard constantly attend at a gate that shall lead to this place of punishment, to prevent strangers from entering it. Let all the officers of the house be strictly forbidden ever to discover any signs of mirth, or even levity, in the presence of the criminals. To encrease the horror of this abode of discipline and misery, let it be called by some name that shall import its design.

2dly, Let the various kinds of punishment that are to be inflicted on crimes, be defined and fixed by law. But let no notice be taken, in the law, of the punishment that awaits any particular crime. By these means we shall prevent the mind from accustoming itself to the view of these punishments, so as to destroy their terror by habit. The indifference and levity with which some men suffer the punishment

ment of hanging, is often occasioned by an insensibility that is contracted by the frequent anticipation of it, or by the appearance of the gallows suggesting the remembrance of scenes of criminal festivity, in which it was the subject of humour or ridicule. Besides, punishments should always be varied in degree, according to the temper of criminals, or the progress of their reformation.

3dly, Let the duration of punishments, for all crimes, be limited, but let this limitation be unknown. I conceive this secret to be of the utmost importance in reforming criminals, and preventing crimes. The imagination, when agitated with uncertainty, will seldom fail of connecting the longest duration of punishment, with the smallest crime.

I cannot conceive any thing more calculated to diffuse terror through a community, and thereby to prevent crimes, than the combination of the three circumstances that have been mentioned in punishments. Children will press upon the evening fire in listening to the tales that will be spread from this abode

of misery. Superstition will add to its horrors, and romance will find in it ample materials for fiction, which cannot fail of increasing the terror of its punishments.

Let it not be objected, that the terror produced by the history of these secret punishments, will operate like the abortive sympathy I have described. *Active* sympathy can be fully excited only through the avenues of the eyes and the ears. Besides, the recollection that the only design of punishment is the reformation of the criminal, will suspend the action of sympathy altogether. We listen with paleness to the history of a tedious and painful operation in surgery, without a wish to arrest the hand of the operator. Our sympathy, which in this case is of the *passive* kind, is mixed with pleasure, when we are assured, that there is a certainty of the operation being the means of saving the life of the sufferer.

Nor let the expence of erecting and supporting a house of repentance, for the purposes that have been mentioned, deter us from the undertaking. It would be easy to demonstrate, that it will not cost one-fourth

as much as the maintenance of the numerous jails that are now necessary in every well-regulated state. But why should receptacles be provided and supported at an immense expence, in every country, for the relief of persons afflicted with bodily disorders, and an objection be made to providing a place for the cure of the diseases of the mind ?

The nature—degrees—and duration of the punishments, should all be determined beyond a certain degree, by a court properly constituted for that purpose, and whose business it should be to visit the receptacle for criminals once or twice a year.

I am aware of the prejudices of freemen, against entrusting power to a discretionary court. But let it be remembered that no power is committed to this court, but what is possessed by the different courts of justice in all free countries ; nor so much as is now wisely and necessarily possessed by the supreme and inferior courts, in the execution of the penal laws of Pennsylvania. I shall spend no time in defending the consistency of private

punishments, with a safe and free government. Truth upon this subject, cannot be divided. If public punishments are injurious to criminals and to society, it follows, that crimes should be punished in private, or not punished at all. There is no alternative. The opposition to private punishments, therefore, is founded altogether in prejudice, or in ignorance of the true principles of liberty.

The safety and advantages of private punishments, will appear further, when I add, that the best governed families and schools are those, in which the faults of servants and children are rebuked privately, and where confinement and solitude are preferred for correction, to the use of the rod.

In order to render these punishments effectual, they should be accommodated to the constitutions and tempers of the criminals, and the peculiar nature of their crimes. Peculiar attention should be paid, likewise, in the nature, degrees and duration of punishments, to crimes, as they arise from passion, habit or temptation.

The

The punishments should consist of BODILY PAIN, LABOUR, WATCHFULNESS, SOLITUDE, and SILENCE. They should all be joined with CLEANLINESS and a SIMPLE DIET. To ascertain the nature, degrees, and duration of the bodily pain, will require some knowledge of the principles of sensation, and of the sympathies which occur in the nervous system. The labour should be so regulated and directed, as to be profitable to the state. Besides employing criminals in laborious and useful manufactures, they may be compelled to derive all their subsistence from a farm and a garden, cultivated by their own hands, adjoining the place of their confinement.

These punishments may be used separately, or more or less combined, according to the nature of the crimes, or according to the variations of the constitution and temper of the criminal. In the application of them, the utmost possible advantages should be taken of the laws of the association of ideas, of habit, and of imitation.

To render these physical remedies more effectual, they should be accompanied by regular

lar instruction in the principles, and obligations of religion, by persons appointed for that purpose.

Thus far I am supported, in the application of the remedies I have mentioned, for the cure of crimes, by the facts that are contained in Mr. Howard's History of Prisons, and by other observations. It remains yet to prescribe the *specific* punishment that is proper for each *specific* crime. Here my subject begins to oppress me. I have no more doubt of every crime having its cure in moral and physical influence, than I have of the efficacy of the Peruvian bark in curing the intermitting fever. The only difficulty is, to find out the proper remedy or remedies for particular vices. Mr. Dufriche de Valazé, in his elaborate treatise upon penal laws, has performed the office of a pioneer upon this difficult subject. He has divided crimes into classes, and has affixed punishments to each of them, in a number of ingenious tables. Some of the connections he has established between crimes and punishments, appear to be just.—But many of his punishments are contrary to the first principles of action in man ;

man ; and all of them are, in my opinion, improper, as far as he orders them to be inflicted in the *eye* of the *public*. His attempt, however, is laudable, and deserves the praise of every friend to mankind.

If the invention of a machine for facilitating labour, has been repaid with the gratitude of a country, how much more will that man deserve, who shall invent the most speedy and effectual methods of restoring the vicious part of mankind to virtue and happiness, and of extirpating a portion of vice from the world?—Happy condition of human affairs! when humanity, philosophy and christianity, shall unite their influence to teach men, that they are brethren; and to prevent their preying any longer upon each other! Happy citizens of the United States, whose governments permit them to adopt every discovery in the moral or intellectual world, that leads to these benevolent purposes!

Let it not be objected, that it will be impossible for men, who have expiated their offences by the mode of punishment that has
been

been proposed, to recover their former connections with society. This objection arises from an unfortunate association of ideas. The infamy of criminals, is derived, not so much from the remembrance of their crimes, as from the recollection of the ignominy of their punishments. Crimes produce a stain, which may be washed out by reformation, and which frequently wears away by time: but public punishments leave scars, which disfigure the whole character; and hence persons, who have suffered them, are ever afterwards viewed with horror or aversion. If crimes were expiated by private discipline, and succeeded by reformation, criminals would probably suffer no more in character from them, than men suffer in their reputation or usefulness from the punishments they have undergone when boys at school.

I am so perfectly satisfied of the truth of this opinion, that methinks I already hear the inhabitants of our villages and townships counting the years that shall complete the reformation of one of their citizens. I behold them running to meet him on the day of his deliverance.—His friends and family bathe
his

his cheeks with tears of joy; and the universal shout of the neighbourhood is, " This
 " our brother was lost, and is found—was
 " dead, and is alive."——

It has long been a desideratum in government, that there should exist in it no pardoning power, since the *certainty* of punishment operates so much more than its severity, or infamy, in preventing crimes. But where punishments are excessive in degree, or infamous from being public, a pardoning power is absolutely necessary. Remove their severity and public infamy, and a pardoning power ceases to be necessary in a code of criminal jurisprudence.—Nay, further—it is such a defect in penal laws, as in some measure defeats every invention to prevent crimes, or to cure habits of vice. If punishments were moderate, just, and private, they would exalt the feelings of public justice and benevolence so far above the emotions of humanity in witnesses, juries, and judges, that they would forget to conceal, or to palliate crimes; and the *certainty* of punishment, by extinguishing all hope of pardon in the criminal, would lead him to connect the beginning of
 his

his repentance, with the last words of his sentence of condemnation. To obtain this great and salutary end, there should exist *certain* portions of punishment, both in duration and degree, which should be placed by law beyond the power of the discretionary court before mentioned, to shorten or mitigate.

I have said nothing upon the manner of inflicting death as a punishment for crimes, because I consider it as an improper punishment for *any* crime. Even murder itself is propagated by the punishment of death for murder. Of this we have a remarkable proof in Italy. The Duke of Tuscany, soon after the publication of the Marquis of Beccaria's excellent treatise upon this subject, abolished death as a punishment for murder. A gentleman, who resided five years at Pisa, informed me, that only five murders had been perpetrated in his dominions in twenty years. The same gentleman added, that after his residence in Tuscany, he spent three months in Rome, where death is still the punishment of murder, and where executions, according to Dr. Moore, are conducted
with

with peculiar circumstances of public parade. During this short period, there were sixty murders committed in the precincts of that city. It is remarkable, the manners, principles, and religion, of the inhabitants of Tuscany and Rome, are exactly the same. The abolition of death alone, as a punishment for murder, produced this difference in the moral character of the two nations.

I suspect the attachment to death, as a punishment for murder, in minds otherwise enlightened, upon the subject of capital punishments, arises from a false interpretation of a passage contained in the Old Testament, and that is, "He that sheds the blood of man, by man shall his blood be shed." This has been supposed to imply, that blood could only be expiated by blood. But I am disposed to believe, with a late commentator* upon this text of scripture, that it is rather a *prediction* than a *law*. The language of it is simply, that such will be the depravity and folly of man, that

* The Rev. Mr. *William Turner*, in the second vol. of the *Memoirs of the Literary and Philosophical Society of Manchester*.

murder,

murder, in every age, shall beget murder. Laws, therefore, which inflict death for murder, are, in my opinion, as unchristian as those which justify or tolerate revenge ; for the obligations of christianity upon individuals, to promote repentance, to forgive injuries, and to discharge the duties of universal benevolence, are equally binding upon states.

The power over human life, is the solitary prerogative of HIM who gave it. Human laws, therefore, rise in rebellion against this prerogative, when they transfer it to human hands.

If society can be secured from violence, by confining the murderer, so as to prevent a repetition of his crime, the end of extirpation will be answered. In confinement, he may be reformed—and if this should prove impracticable, he may be restrained for a term of years, that will probably be coeval with his life.

There was a time, when the punishment of captives with death or servitude, and the
indif-

indiscriminate destruction of peaceable husbands, women and children, were thought to be essential to the success of war, and the safety of states. But experience has taught us, that this is not the case. And in proportion as humanity has triumphed over these maxims of false policy, wars have been less frequent and terrible, and nations have enjoyed longer intervals of internal tranquillity. The virtues are all parts of a circle. Whatever is humane, is wise—what is wise, is just—and whatever is wise, just, and humane, will be found to be the true interest of states, whether criminals or foreign enemies are the objects of their legislation.

I have taken no notice of perpetual banishment, as a legal punishment, as I consider it the next in degree, in folly, and cruelty, to the punishment of death. If the receptacle for criminals, which has been proposed, is erected in a *remote* part of the state, it will act with the same force upon the feelings of the human heart, as perpetual banishment. Exile, when perpetual, by destroying one of the most powerful

D principles

principles of action in man, viz. the love of kindred, and country, deprives us of all the advantages, which might be derived from it, in the business of reformation. While certain passions are weakened, this noble passion is strengthened by age; hence, by preserving this passion alive, we furnish a principle, which, in time, may become an over-match for those vicious habits, which separated criminals from their friends, and from society.

Notwithstanding this testimony against the punishment of death and perpetual banishment, I cannot help adding, that there is more mercy to the criminal, and less injury done to society, by both of them, than by *public* infamy and pain, without them.

The great art of surgery has been said to consist in saving, not in destroying, or amputating the diseased parts of the human body. Let governments learn to imitate, in this respect, the skill and humanity of the healing art. Nature knows no waste in any of her operations. Even putrefaction itself, is the parent of useful productions to man.

Human

Human ingenuity, imitates nature in a variety of arts. Of all matters, of all kinds, are daily converted into the means of encreasing the profits of industry, and the pleasures of human life. The soul of man alone, with all its moral and intellectual powers, when misled by passion, is abandoned, by the ignorance or cruelty of man, to unprofitable corruption, or extirpation.

If the foregoing reasonings and facts, have been urged in vain, in favour of private punishments, I shall add one more argument, which I hope will be irresistible. The punishments of wicked men, in the world of spirits, are invisible; we have no knowledge of their reality, nature, degrees, or duration, but what was revealed to us near eighteen hundred years ago; and yet governments owe their stability, chiefly, to that morality which the terror of these invisible, remote, and indefinite punishments, excites in the human mind.

A worthy prelate of the church of England once said upon seeing a criminal led to execution, "There goes my wicked self." Consi-

dering the vices to which the failty of human nature exposes whole families of every rank and class in life, it becomes us whenever we see a fellow-creature led to public infamy and pain, to add further, " There goes my unhappy father, my unhappy brother, or my unhappy son," and afterwards to ask ourselves, whether *private* punishments are not to be preferred to *public* !

For the honour of humanity it can be said, that in every age and country, there have been found persons in whom uncorrupted nature has triumphed over custom, and law. Else, why do we hear of houses being abandoned near to places of public execution ? Why do we see doors and windows shut on the days or hours of criminal exhibitions and processions ? Why do we hear of aid being secretly afforded to criminals, to mitigate or elude the severity of their punishments ?—Why is the public executioner of the law an object of such general detestation ? These things are the latent struggles of reason, or rather the secret voice of God himself, speaking in the human heart, against the folly and cruelty of public punishments.

I shall

I shall conclude this enquiry by observing, that the same false religion and philosophy, which once kindled the fire on the altar of persecution, now doom the criminal to public ignominy and death. In proportion as the principles of philosophy and christianity are understood, they will agree in extinguishing the one, and destroying the other. If these principles continue to extend their influence upon government, as they have done for some years past, I cannot help entertaining a hope, that the time is not very distant, when the gallows, the pillory, the stocks, the whipping-post, and the wheel-barrow (the usual engines of public punishments) will be connected with the history of the rack, and the stake, as marks of the barbarity of ages and countries, and as melancholy proofs of the feeble operation of reason, and religion, upon the human mind.

F I N I S.

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